IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

WP(C).No. 16628 of 2007(D)

PETITIONER:

---

1. MARIYA, W/O LATE M.MUHAMMED,
   MOOTHEDATHU HOUSE, ALIPARAMBA POST,
   ANAMANGAD, MALAPPURAM.

2. ASHRAF, S/O LATE M.MUHAMMED,
   MOOTHEDATHU HOUSE, ALIPARAMBA POST,
   ANAMANGAD, MALAPPURAM.

BY ADV. SRI.MANSOOR.B.H.

RESPONDENTS:

---

1. BHARAT SANCHAR NIGAM LIMITED,
   REPRESENTED BY ITS CHAIRMAN & MANAGING DIRECTOR,
   STATESMANS HOUSE, NEW DELHI-110001.

2. CHIEF GENERAL MANAGER, BSNL,
   TAMIL NADU CIRCLE, MOUNT ROAD, CHENNAI-2.

3. THE PRINCIPAL GENERAL MANAGER,
   B.S.N.L., COIMBATORE-11.

4. HIGH POWER COMMITTEE, B.S.N.L.,
   CORPORATE OFFICE, NEW DELHI.

BY ADV. SRI.S.K.BALACHANDRAN, SC, BSNL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 7/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE ORDER DT. 1.9.1999

EXT.P2: -DO- OF THE APPLICATION SUBMITTED BEFORE THE 3RD RESPONDENT

EXT.P3: -DO- OF THE COMMUNICATION DT. 2.4.2001 ISSUED BY THE OFFICE OF THE 3RD RESPONDENT

EXT.P4: -DO- OF THE REPLY SUBMITTED TO EXT.P3

EXT.P5: -DO- OF THE REPRESENTATION DT. 26.5.2003

EXT.P6: -DO- DT. 27.5.2004

EXT.P7: -DO- OF THE COMMUNICATION DT. 22.10.2005 ISSUED BY THE 3RD RESPONDENT

EXT.P8: -DO- OF THE REPRESENTATION DT. 5.11.2005

RESPONDENTS' EXTS:

EXT.R1: -DO- OF G.O.I LETTER NO: 14014/61/94-ESTT (D) DT. 9.10.98 ISSUED BY DOPT

EXT.R2: -DO- OF LETTER NO: 268-50/2005-PERS.IV DT. 14.10.06

jj /TRUE COPY/

P.S TO JUDGE

V.GIRI, J.

W.P.(C).No.16628 of 2007 D

Dated this the 7th day of November, 2007.

JUDGMENT

The first petitioner's husband M.Mohammed was a Cable splicer in SDE, Tatabad, Coimbatore. At the age of 54, he was invalidated from service on medical grounds. The second petitioner is the younger son of Mohammed. An application was submitted by the 1st petitioner for appointment of the second petitioner under the dying in harness scheme. This was ultimately rejected under Ext.P7 stating that the request for appointment on compassionate ground in relaxation of the recruitment rules has been rejected by the High Power Committee. Ext.P7 is under challenge in this writ petition.

2. A statement has been filed by Sri.S.K.Balachandran, Counsel appearing on behalf of the BSNL. It is stated that the 2nd petitioner's case was considered by the High Power Committee consisting of 3 members. They have

taken a decision which is extracted in Ext.R2. The same reads as follows:

> **"The case was forwarded for relaxation of earning member in the family as the two elder sons are settled in Gulf. The ex-official got his retirement on medical invalidation on 01.09.1999 when he was 54 years and 5 months of age. Later he expired on 18.01.2005. His family consists of his wife and three sons and one married daughter. The family is living in its own house. Keeping in view the overall aspects of the case viz., assets, liabilities and the fact that the sons are quite grown up to support the family, the committee did not find it a fit case for compassionate appointment and rejected the request in accordance with DoPT OM No.14014/6/94-Estt(D) dated 9.10.1998, the scheme for the purpose."**

3. Thus, what seems to have been considered by the High Power Committee was the fact that late Mohammed left behind him 3 sons, including the second petitioner. The elder two sons were employed in gulf. The only daughter was married. The family is living in its own house. Since the sons are grown up, they obviously are competent to support their family

and it is on this ground the application for appointment of the 2nd petitioner on compassionate ground was rejected.

4. After considering the contentions in the writ petition and the reasons given in Ext.R2(a), I cannot say that there is any gross error in the stand taken by the respondents declining the appointment of the second petitioner on compassionate ground. What is noteworthy is that three sons are left behind by the deceased and all of them have grown up and two of them, at the material point of time, were working in the gulf countries. The elder sons are married and are living separately. Therefore, their employment abroad cannot be considered as a disability so far as the second petitioner is concerned. Appointment under the dying in harness scheme is intended to support a family which are suddenly let without their bread winner and surviving members of the family do not have the support of persons who can

otherwise earn and support themselves and their mother, parents or siblings. In the present case, the three sons left behind by Mohammed are grown up and they are independently competent to take care of themselves as also their mother. In the circumstances, I do not find any ground to interfere in this writ petition and the same is dismissed.

Sd/-
(V.GIRI)
JUDGE

sk/

//true copy//